

Message Text

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ORIGIN TRSE-00

INFO OCT-01 EUR-12 ISO-00 SSO-00 NSCE-00 INRE-00 EB-07

SS-15 L-02 SP-02 FRB-01 OMB-01 H-01 AID-05 IGA-01

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DRAFTED BY TREAS:EMEIGHER:WW

APPROVED BY EB/IFD/ODF:RSGELBARD

TREAS:JBUSHNELL

ARA/ECP:WKNEPPER

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FM SECSTATE WASHDC

TO AMEMBASSY BONN IMMEDIATE

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E.O. 11652: N/A

TAGS: EAID, EFIN, IDB

SUBJECT: IDB INTER-REGIONAL CAPITAL FUND

REF: BONN 18678

1. FOLLOWING POINTS HAVE BEEN DRAFTED IN RESPONSE TO MOLTRECHT'S QUESTION RAISED REFTTEL, PARA. 2, AND SHOULD BE PASSED TO HIM ASAP. PLEASE ADVISE IF MOLTRECHT DESIRES DETAILED RESPONSE TO OTHER ASPECTS U.S. POSITION PRIOR TO MADRID MEETING.

2. IN THE PAST THE U.S. HAS IN FACT GENERALLY ARRANGED TO HAVE APPROPRIATIONS PASSED BY CONGRESS AT LEAST FOR A FIRST INSTALLMENT BEFORE AGREEING TO SUBSCRIBE TO CALLABLE CAPITAL. IN SOME CASES, WE HAVE MADE A LEGALLY BINDING COMMITMENT ON THE BASIS OF A CONGRESSIONAL EXPRESSION OF AGREEMENT IN A COMMITTEE REPORT, I.E., IDA III. WE NOW FEEL WE CAN GO EVEN BEYOND THIS RELYING SOLELY ON AUTHORIZING LEGISLATION AS COMMITTING THE U.S. FOR CALLABLE CAPITAL ONLY.

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3. IN THE CASE OF THE INTER-REGIONAL CAPITAL AS EXPLAINED BY MR. BUSHNELL AT THE BONN MEETING, THE U.S. IS CONSIDERING SUBSCRIBING TO CALLABLE CAPITAL WITHOUT OBTAINING APPROPRIATIONS. DURING THE PAST YEAR, WE HAVE RECEIVED INDICATIONS THAT CONGRESS WOULD NOT OBJECT TO CALLABLE

CAPITAL SUBSCRIPTIONS ON AN AUTHORIZATION ONLY BASIS, ALTHOUGH WE INTEND TO CONSULT FURTHER WITH CONGRESS BEFORE FORMALLY UNDERTAKING TO PROCEED ALONG THIS TRACK.

4. THE FOLLOWING LEGAL POINTS MAKE CLEAR THAT A COMMITMENT TO SUBSCRIBE AND SUBSCRIPTIONS WITHOUT A PRIOR APPROPRIATION WOULD BE FULLY BINDING ON THE UNITED STATES.

5. WITH REGARD TO IDB ORDINARY OR INTER-REGIONAL CALLABLE CAPITAL, THERE IS NO NECESSITY IN U.S. DOMESTIC LEGISLATION FOR ANY PRIOR APPROPRIATIONS BY THE U.S. CONGRESS FOR THE U.S. TO SUBSCRIBE TO THE CALLABLE CAPITAL OF THE BANK, ALTHOUGH APPROPRIATIONS CLEARLY WOULD BE REQUIRED PRIOR TO ANY PAYMENT PURSUANT TO A FUTURE CALL ON THE SUBSCRIPTION. THE AUTHORIZING LEGISLATION BY ITS TERMS WOULD GIVE THE U.S. AUTHORITY FOR THE SUBSCRIPTION -- EITHER TO ORDINARY CAPITAL OR TO INTER-REGIONAL CAPITAL. ONCE THE U.S. SUBSCRIBES TO THE CALLABLE CAPITAL OF THE BANK, THERE IS A LEGALLY BINDING OBLIGATION ON THE U.S. THUS, U.S. CALLABLE SUBSCRIPTIONS WOULD HAVE THE STATUS OF OBLIGATIONS BACKED BY THE FULL FAITH AND CREDIT OF THE U.S., I.E., SAME STATUS AS U.S. GOVERNMENT AND U.S. AGENCY OBLIGATIONS.

6. THE ATTORNEY GENERAL OF THE U.S. HAS TAKEN THE POSITION THAT WHERE AN AGENCY OF THE U.S. CONTRACTS AN OBLIGATION PURSUANT TO A CONGRESSIONAL GRANT OF AUTHORITY FOR CONSTITUTIONAL PURPOSES SUCH OBLIGATION IS FULLY BINDING ON THE U.S. NOT WITHSTANDING FACT THAT A FUTURE APPROPRIATION MIGHT BE NECESSARY IN ORDER TO FUND THAT OBLIGATION. THUS, WHILE AS NOTED ABOVE, APPROPRIATIONS WOULD HAVE TO BE SOUGHT FROM THE U.S. CONGRESS IF THERE WAS A CALL ON THE CALLABLE CAPITAL, THE LEGALLY BINDING OBLIGATION OF THE U.S. GOVERNMENT ARISES AS SOON AS THE LIMITED OFFICIAL USE

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SUBSCRIPTION IS MADE.

7. THE ONLY REASON WHY AN APPROPRIATION AS WELL AS AN AUTHORIZATION IS NECESSARY FOR U.S. CALLABLE CAPITAL SUBSCRIPTIONS TO THE ORDINARY CAPITAL OF THE IDB IS THE COVENANT BETWEEN THE BANK AND ITS EXISTING ORDINARY CAPITAL BONDHOLDERS WHICH PROVIDES THAT THE BANK WILL NOT BORROW FOR ITS ORDINARY CAPITAL RESOURCES BEYOND THE

AMOUNT OF U.S. CALLABLE CAPITAL "IN RESPECT OF WHICH THE U.S. HAS TAKEN ALL ACTION NECESSARY TO PERMIT PAYMENT OF ANY CALL OR CALLS ON DEMAND". FOR THE U.S. TO MAKE PAYMENT ON DEMAND WITHOUT FURTHER CONGRESSIONAL ACTION, THE FUNDS MUST HAVE BEEN APPROPRIATED.

8. IT IS THUS ONLY THE ON DEMAND ASPECT OF THE ORDINARY

CAPITAL COVENANT THAT MAKES THE U.S. APPROPRIATION NECESSARY, AND WOULD CONTINUE TO MAKE IT NECESSARY FOR ORDINARY CAPITAL AS LONG AS COVENANT IS OUTSTANDING. THE APPROPRIATION IS NOT NECESSARY FOR THE U.S. TO INCUR A LEGALLY BINDING OBLIGATION UPON SUBSCRIPTION TO THE SHARES. SINCE IT IS NOT EXPECTED THAT SUCH A COVENANT WOULD BE INCLUDED IN THE INTER-REGIONAL CAPITAL BONDS, APPROPRIATIONS WOULD NOT BE NECESSARY FOR A U.S. SUBSCRIPTION TO THE CALLABLE INTER-REGIONAL CAPITAL, AND THE U.S. WOULD BE ABLE TO SUBSCRIBE TO SUCH CAPITAL IMMEDIATELY AFTER OBTAINING AUTHORIZING LEGISLATION.

9. IN CASE OF SUBSCRIPTION TO PAID-IN CAPITAL BY THE U.S., IT IS THE INTENTION OF THE U.S. TO SEEK APPROPRIATIONS AS WELL AS AUTHORIZING LEGISLATION WHETHER THE U.S. SUBSCRIPTION IS TO THE ORDINARY OR TO THE INTER-

REGIONAL CAPITAL OF THE BANK. THE REASON FOR THIS IS THAT IT IS NECESSARY THAT FUNDS BE APPROPRIATED BEFORE PAYMENT TO THE BANK CAN BE MADE. KISSINGER

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